

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7964

Petition of Entergy Nuclear Vermont Yankee, LLC and)
Entergy Nuclear Operations, Inc. pursuant to 30 V.S.A.)
§ 248(j), for a certificate of public good to install a)
diesel-driven station blackout electric generator for the)
Vermont Yankee Nuclear Power Station)

Order entered: 12/27/2012

**ORDER OPENING INVESTIGATION AND
NOTICE OF PREHEARING CONFERENCE**

I. INTRODUCTION

On September 7, 2012, Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (together, "Entergy VY" or "Company") filed a petition with the Vermont Public Service Board ("Board") for a certificate of public good ("CPG"), pursuant to 30 V.S.A. § 248(j) to install a 3000 kW diesel-driven electric generator within the protected area of the Vermont Yankee Nuclear Power Station ("VY Station"). Entergy VY's petition states that the proposed installation of the generator is intended to comply with safety regulations promulgated by the Nuclear Regulatory Commission ("NRC") and supply power in the event of a station blackout. Entergy VY further states that the petition is prompted by changes in the ISO-New England Black Start program, which could cause Entergy VY's current source of AC station blackout power, the Vernon Hydro Station, to drop out of the program or be ineligible. Entergy VY requests expedited consideration as a result.

On September 20, the Clerk of the Board issued a memorandum requesting comments from parties to Docket 7862 concerning how the Board should treat Entergy VY's petition.¹ In particular, the Board requested comments on the following three issues:

1. In Docket 7862, the Board is considering a petition from Entergy VY for an amendment of its existing CPG under Section 231 of Title 30 authorizing ownership and operation of the VY Station.

1. On June 13, 2002, the Board issued an Order approving the sale of Vermont Yankee to Entergy VY and a Certificate of Public Good ("6545 CPG") in Docket No. 6545. Condition 8 of the Docket No. 6545 Order stated that, absent issuance of a new CPG or renewal of the 6545 CPG, Entergy VY was not permitted to operate Vermont Yankee after March 21, 2012. The Board has not issued a new CPG or renewed the 6545 CPG. On March 19, 2012, the Board ruled in Docket No. 7440 that Vermont law did not extend Entergy VY's CPG. In light of these facts, would the Board's consideration, review, or approval of Entergy VY's petition *de facto* recognize a right to operate Vermont Yankee beyond the date set forth in Condition 8 or ratify such operation?
2. What legal or practical effect, if any, would the Board's consideration, review or approval of Entergy VY's 248(j) petition have on the Board's power to enforce Entergy VY's contractual commitments in the Docket No. 6545 Memorandum of Understanding ("MOU") or on the rights of any party to that MOU?
3. Should consideration of Entergy VY's request be conditioned upon an express statement from Entergy VY that such consideration does not in any way recognize a right to operate Vermont Yankee after March 21, 2012?

The Board received responses from Entergy VY, the Department of Public Service ("Department") and the Conservation Law Foundation ("CLF"). In general, Entergy VY stated that the request for a CPG would have no bearing on the matters under consideration in Docket 7862. Entergy VY stated that Board action would "recognize only that the VY Station is presently operating pursuant to an NRC license" and that consideration of the petition would have no effect on the contractual commitments Entergy VY made to the Department and certain other parties in Docket 6545. Entergy VY also stated that a condition requiring an express statement from Entergy VY that consideration of the petition does not recognize a right to operate the VY Station after March 21, 2012, was unnecessary, but that Entergy VY did not object to such a condition. Entergy VY provided such a statement.

The Department generally agreed with Entergy VY's conclusions. The Department, however, provided a recommendation that the Board require Entergy VY to make the following statement:

Entergy agrees that the Board's consideration, review or approval of the Generator CPG Petition does not in any way recognize the right of Entergy to operate the VY Station after March 21, 2012, nor ratify its continued operation thereafter. Entergy shall not reference, cite, or use in any manner a decision of the Board to consider, review, or approve the Generator CPG Petition in any other proceeding related to the VY Station.

The Department disputes Entergy's contention that rapid review of Entergy VY's petition is required. The Department stated that Entergy VY would continue to have access to the Vernon Dam for power at least through September 2013, based upon representations from the owner of the Vernon Dam, TransCanada Corporation.² Further, the Department contested Entergy VY's assertion that installation of the generator might be preempted by federal law, observing that such installation is only one of various options for meeting the NRC requirements.

CLF recommends that the Board reject Entergy VY's request. CLF asserts that Entergy VY is currently operating without the necessary state approvals. CLF also contends that the Board lacks authority to consider Entergy VY's current request.

At this time, the Board has several concerns about Entergy VY's petition. Most importantly, Entergy VY at this time is not in compliance with existing requirements in Board Orders and CPGs. As the Board found in our March 19, 2012, Order in Docket 7440, the CPG issued to Entergy VY in Docket 6545 (the docket in which the Board approved the purchase of the VY Station by these two entities) has continued in effect under 3 V.S.A. § 814(b).³ However, Condition 8, of the Docket 6545 Order, which prohibits operation of the VY Station after March 21, 2012, absent Board approval, remains in effect. The same is true of the Board's Order and CPG in Docket 7082 (in which the Board approved construction of a dry fuel storage facility), both of which contain a similar prohibition against operation. An additional concern is whether Entergy VY can make the required showing that installation of the generator is needed as required by Section 248(b)(2) (NRC rules appear to require that the VY Station have blackout power available, but do not appear to mandate that Entergy VY install the generator).

Normally, the Board would not consider a petition from a company that is not in compliance with existing Board orders, unless that company also demonstrated an intent to come

2. In a subsequent response on October 12, Entergy VY acknowledges that TransCanada's statement concerning the Vernon Dam "will be helpful in alleviating the pressure on the review schedule for the SBDG petition."

3. The Board recently reaffirmed these conclusions in an Order issued November 30, 2012, in Dockets 6545, 7082, and 7440.

into compliance. Entergy VY has not indicated such an intent here.⁴ Nonetheless, the Board has decided to initiate a proceeding to consider Entergy VY's petition. The Board will also appoint a Hearing Officer and convene a prehearing conference to establish a schedule in this proceeding. Because of the concerns outlined in the Clerk's Memorandum of September 20, we adopt the recommendations and require, as a condition of considering Entergy VY's petition, that Entergy VY submit the statement proposed by the Department as set forth above.

As a preliminary matter, the Hearing Officer may request parties to examine the question of whether (i) the Board can and should grant permission for Entergy VY to install the generator when Entergy VY is not in compliance with existing Orders and CPGs and has not demonstrated that it is willing to comply with orders of this Board and (ii) whether Entergy VY can make the required demonstration of necessity before a new or amended CPG for the operation of the VY Station is issued. The Hearing Officer may then adopt a schedule that tracks with the schedule that we have ordered for Docket 7862 (that schedule was largely proposed by Entergy VY).

II. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board ("Board") of the State of Vermont that:

1. Pursuant to 30 V.S.A. §§ 203, 209, and 248(j), an investigation is opened into the petition filed by Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (together, "Entergy VY") for issuance of a certificate of public good to install a diesel-driven station blackout electric generator.

2. Pursuant to 30 V.S.A. § 8(c), Lars Bang-Jensen, Staff Attorney, is appointed to serve as the Hearing Officer in this proceeding.

3. Pursuant to 30 V.S.A. § 10(c), a Prehearing Conference will be held in this matter on Thursday, January 17, 2013, commencing at 9:30 A.M., at the Public Service Board Hearing

4. Although Entergy VY has applied for a new or amended CPG in Docket 7862 that would, if granted, permit operation of the VY Station in the future, the issuance of such a CPG would not necessarily cure the current non-compliance.

Room, located on the 3rd floor of the People's United Bank Building at 112 State Street in Montpelier, Vermont.

4. As a condition of the Board's consideration and review of Entergy VY's petition, Entergy VY shall make and file with the Board prior to the prehearing conference the statement recommended by the Department of Public Service, as set forth above.

Dated at Montpelier, Vermont, this 27th day of December, 2012.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: December 27, 2012

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

DISSENT OF MEMBER COEN

The Order opening this investigation correctly observes that Entergy VY is not in compliance with Condition 8 of the Board's Order in Docket 6545 and conditions in the Order and CPG in Docket 7082. Entergy VY knowingly decided not to comply with these conditions when it elected to continue operation of Vermont Yankee after March 21 of this year. This occurred only three days after the Board affirmatively informed Entergy VY that the limitations in the prior Board Orders remained in effect. Entergy VY has also not taken any action to remedy the present non-compliance.

These conditions in Orders and CPGs are not unimportant. I personally listened while Entergy VY witnesses made the explicit representations in 2002 that led to approval of the sale transaction and the adoption of Condition 8. I relied upon them in reaching the conclusion that the sale of Vermont Yankee was in the best interest of the state. That condition was a significant consideration in the Board's decision to approve the sale.

In my view, under these circumstances, the Board should not consider Entergy VY's request to construct additional facilities until either the Company has come back into compliance with Board Orders or the Board has resolved Docket 7862 and determined that issuance of a new CPG promotes the general good of the state.

Dated at Montpelier, Vermont, this 27th day of December, 2012.

s/David C. Coen

David C. Coen, Board Member

OFFICE OF THE CLERK

Filed: December 27, 2012

Attest: s/ Susan M. Hudson

Clerk of the Board